

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D. C. 20548

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FILE: B-194363

DATE: April 23, 1979

MATTER OF: Digital Equipment Corporation

DL6700093

[Protest of Service Contract Act Application in Army IFB]

DIGEST:

1. Where it is clear from protester's initial submission that protest is without merit, case development is not necessary and summary denial is in order.
2. Primary responsibility for interpreting and administering Service Contract Act (SCA) is vested in Department of Labor (DOL) and DOL's determination as to those contracts to which SCA will be applied is not subject to question unless it is clearly contrary to law.
3. Where agency identifies "Electronic Technician" as class of service employee to be used in performance of contract, wage determination which does not specifically list "Electronic Technician" but lists "Technician" is not deficient since job description applicable to wage determination defines "Technician" as including "Electronics Technician."

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Digital Equipment Corporation (Digital) protests the inclusion of Service Contract Act (SCA) coverage in invitation for bids (IFB) DAAD07-79-B-0005, issued by the Department of the Army (Army), White Sands Missile Range, New Mexico for the lease, maintenance, and option to purchase Gaming Support Minicomputer (GSM) System Equipment to support the Army's combat battle game facility. Digital asserts (1) that the contract is not covered by the SCA because the principal purpose of the contract is the procurement of computers, not the furnishing of computer services, and (2), even assuming coverage, that the Department of Labor (DOL) prevailing wage determination in the IFB is defective because no job title or job description in the wage determination

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describes the computer maintenance jobs whose performance is called for by this IFB.

Inasmuch as Digital's initial submissions clearly indicate that this protest is without legal merit, the matter will be decided on the basis of the protester's submissions without case development. Northern Illinois University, B-194055, March 15, 1979, 79-1 CPD .

It is clear from the protester's submission that the contracting officer for this procurement, in compliance with Defense Acquisition Regulation (DAR) 12-1005.2 (1976 ed.), filed a Standard Form (SF) 98, Notice of Intention to Make a Service Contract and Response to Notice with the Administrator, Wage and Hour Division, DOL. The SF 98 identified "Electronic Technician" as the class of service employees expected to perform work under the contract. DOL's response was that Wage Determination 72-141 (Rev. 16), which contained minimum wages for 38 classes of service employees in the White Sands area, was applicable to the procurement.

Our Office has consistently held that DOL is the agency primarily responsible for the administration of the SCA and that contracting agencies must follow the views of DOL unless those views are clearly contrary to law. Midwest Service and Supply Co. and Midwest Engine Incorporated, B-191554, July 13, 1978, 78-2 CPD 34; Hewes Engineering Company, Incorporated, B-179501, February 28, 1974, 74-1 CPD 112.

The SCA empowers the Secretary of Labor to administer the Act and to promulgate rules and regulations interpreting and implementing the Act. 41 U.S.C. 353 (1976). The regulations so promulgated indicate DOL's approach to implementing the Act with respect to coverage:

"Contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators are deemed contracts to furnish services in the performance of which service employees will be used.

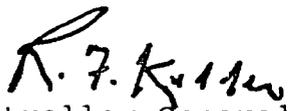
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" \* \* \* a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters \* \* \*. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees. A typewriter company might be the successful bidder on both items and the specifications for each might be included in a single contract for the convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provision of the Act." 29 C.F.R. §§ 4.131 and 4.132 (1978). (Emphasis added.)

Here, while computer equipment is to be obtained on a rental basis with an option to purchase, the contractor is also responsible for the maintenance and repair of the equipment. It is apparent that under the DOL regulations the provision of the maintenance services is subject to the SCA, and we find no basis to conclude that DOL's position is clearly contrary to law. See Midwest Service and Supply Co., et al., supra.

With respect to the second issue raised by Digital, the Army indicated on the SF 98 that it believed that employees performing computer maintenance should be classified as "Electronic Technician." The wage determination does not specifically list that category of service employee. It does, however, set out three levels of the "Technician" classification, and the job description applicable to the wage determination identifies the technician classification as including "Electronics Technician" with duties of installing, maintaining, repairing, and testing electronic equipment. Thus, we find nothing deficient in the wage determination.

The protest is summarily denied.

  
Deputy Comptroller General  
of the United States